

APPEAL NO. 032041
FILED SEPTEMBER 8, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on June 24, 2003. The hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the second and third quarters. The claimant appeals, arguing that he was not informed of the results of the required medical examination (RME) stating that he could work with restrictions until after the second quarter qualifying period had ended and that he was not aware that he could work during that period of time. The respondent (carrier) urges affirmance of the hearing officer's determinations.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____, and reached maximum medical improvement on August 20, 2000, with an impairment rating of 38%. The qualifying period for the second quarter began on September 27 and ended December 26, 2002; the second quarter began on January 9, 2003, and ended April 9, 2003. The qualifying period for the third quarter began on December 27, 2002, and ended March 27, 2003. The third quarter began on April 10, 2003, and ended July 9, 2003.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). At issue is the requirement of Section 408.142(a)(4) and Rule 130.102(b)(2) that the claimant has made a good faith effort to obtain employment commensurate with his ability to work. The claimant proceeds on a basis that he had a total inability to work in the second quarter qualifying period and that he had made a good faith job search in the third quarter qualifying period. The claimant testified that he did not look for work during the second quarter qualifying period. The hearing officer found that the claimant did not meet the requirements of Rule 130.102(d)(4), i.e., that the claimant had some ability to work, that the claimant failed to submit a narrative report from a doctor which specifically explains how his compensable injury caused a total inability to work during the qualifying periods that a RME report dated December 5, 2002, concluded that the claimant could work with some restrictions, and that a functional capacity evaluation dated December 30, 2002, indicated that the claimant could accomplish light work, thereby constituting a record that shows the claimant is able to return to some work.

The claimant testified that he did apply for work during the third quarter qualifying period. With regard to the good faith job search criterion, Rule 130.102(e) provides that, except as provided in subsection (d)(1), (2), (3), and (4) of Rule 130.102, an injured employee who has not returned to work and is able to return to work in any capacity

shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts. That subsection then lists information to be considered in determining whether a good faith effort has been made. The claimant failed to document job searches during the fourth week of the third quarter qualifying period. In Texas Workers' Compensation Commission Appeal No. 992321, decided November 22, 1999, we held that the documentation requirement of Rule 130.102(e) is mandatory and that a hearing officer could not consider nondocumented job search efforts in arriving at the good faith determination. See also Texas Workers' Compensation Commission Appeal No. 992247, decided November 23, 1999. Appeal No. 992247 also specifically pointed out that the documentation requirement cannot be satisfied through testimony. Consistent with existing precedent as discussed above, such documentation was mandatory.

Rule 130.102(d)(5) provides, in pertinent part, that an injured employee has made the required good faith effort if the employee "has provided sufficient documentation as described in subsection (e) of this section to show that he or she has made a good faith effort to obtain employment." Subsection (e) further provides that the injured worker "who is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts." The hearing officer noted that although the claimant made 20 job contacts during the third quarter qualifying period, he failed to explain what he did on the other remaining 70 days regarding obtaining employment and that the requirement to look for work every week of the qualifying period is a minimum requirement and is not dispositive of a good faith effort.

Whether a claimant satisfied the good faith requirement for SIBs entitlement is a factual question for the hearing officer to resolve. Texas Workers' Compensation Commission Appeal No. 94150, decided March 22, 1994. The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The claimant seems to argue in his appeal that the RME report dated December 5, 2002, stating that he could work with some restrictions should be ignored in regard to qualifying for the second quarter of SIBs because it was accomplished at the end of the qualifying period and he was not aware that he could return to work. The Appeals Panel has never held that the claimant's lack of knowledge of another record will preclude the use of that record in determining a good faith effort to obtain employment under Rule 130.102(d)(4) and we decline to do so now.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Edward Vilano
Appeals Judge